

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT DANVILLE, VA

FILED *for*
RK

SEP 29 2006

JOHN F. CORCORAN, CLERK
BY: *HMcDonald*
DEPUTY CLERK

DWIGHT LEWIS,
Petitioner,

Civil Action No. 7:06-cv-00554

By: Hon. Jackson L. Kiser
Senior U.S. District Judge

JUANITA J. STEWART,
Respondent.

ORDER

Alleging that his sentence was calculated incorrectly, petitioner Dwight Lewis, # 221569, a Virginia inmate proceeding pro se, has submitted to the court a "NOTICE OF APPEAL," which I construe as a petition for writ of habeas corpus, pursuant to 28 U.S.C. §2254. Court records indicate that petitioner has previously filed a §2254 petition concerning the same sentence calculation.¹ Thus, petitioner's current petition is a subsequent one, falling under the provisions of amendments to the federal habeas statutes regarding subsequent or successive §2254 petitions. See Title I, Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996). Under these amendments, this court may consider a second or successive §2254 petition only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the petition meet certain criteria. See 28 U.S.C. §2244(b). As petitioner has not submitted any evidence of such certification by the Court of Appeals, it is hereby

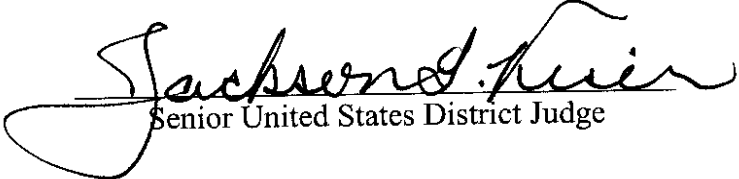
¹ In that case, Civil Action No. 7:00-cv-00564, Lewis raised the identical contention that he raises here, *i.e.*, that the Virginia Department of Corrections ("VDOC") twice counted his sentence from Henry County, thus improperly increasing his sentence from 23 years and 24 months to 24 years and 30 months. Respondent contended that Lewis's petition was untimely. After a review of the record, I found that VDOC had not made a mistake in the computation of petitioner's sentence. Accordingly, I found that even if Lewis's petition was deemed timely, respondent's motion to dismiss must be granted. The United States Court of Appeals for the Fourth Circuit affirmed in an unpublished per curiam opinion, no. 05-6087, decided August 17, 2005.

ORDERED

that the above referenced petition for writ of habeas corpus, pursuant to 28 U.S.C. §2254, shall be and hereby is **FILED** for administrative purposes only and **DISMISSED** without prejudice. A Fourth Circuit form and instructions for filing a request for certification to file a subsequent petition are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.

The Clerk is directed to send certified copies of this order to petitioner.

ENTER: This 29th day of September, 2006.


Senior United States District Judge